

Remarks

In the 5 April 2006 Election/Restriction Requirement, the Examiner has offered the opinion that the above referenced application contains claims directed to “patentably distinct species drawn to a plurality of process features: species a) where a plurality of process feature data encapsulate all the different options available for completing a process (corresponds to a prior version of claim 39), species b) where a plurality of process feature data identifies any options for implementing a process or a process feature at a future date (corresponds to a prior version of claim 40), the species are independent or distinct because they have different effects”. The Assignee elects “species a) where a plurality of process feature data encapsulate all the different options available for completing a process” with traverse. The Assignee traverses this requirement for the election of a separate species for these claims by noting that claim 39 was previously amended to include the language from a prior version of claim 40. The amended claim 39 now comprises a small Markush group of closely related members. Additional arguments traversing this requirement are presented on page 11.

In the 5 April 2006 Election/Restriction Requirement, the Examiner goes on to state that claims 35, 48 and 59 are generic before requesting that the Assignee elect a species for six more claims that are dependent on claim 35. The six additional claims are: claim 41, claim 42, claim 43, claim 44, claim 45 and claim 46. In the narrative that follows, the Assignee will make an election with traversal for each of these six claims.

In the 5 April 2006 Election/Restriction Requirement, the Examiner offers the opinion that claim 41 is generic to the allegedly patentably distinct species: of process specification data. The Assignee elects “operating factor data” with traverse.

In the 5 April 2006 Election/Restriction Requirement, the Examiner offers the opinion that claim 42 is generic to the allegedly patentably distinct species: of source databases. The Assignee elects an “operating factor database” with traverse.

In the 5 April 2006 Election/Restriction Requirement, the Examiner offers the opinion that claim 43 is generic to the allegedly patentably distinct species: uses of simulation data. The Assignee elects “identifying an impact of one or more process outputs on a matrix of risk” with traverse.

In the 5 April 2006 Election/Restriction Requirement, the Examiner offers the opinion that claim 44 is generic to the allegedly patentably distinct species: segment of value. The Assignee elects “a real option segment of value” with traverse.

In the 5 April 2006 Election/Restriction Requirement, the Examiner offers the opinion that claim 45 is generic to the allegedly patentably distinct species: segment of value. The Assignee elects “a current operation segment of value” with traverse.

In the 5 April 2006 Election/Restriction Requirement, the Examiner offers the opinion that claim 46 is generic to the allegedly patentably distinct species: external factors. The Assignee elects “numerical indications of the organization performance compared to external expectations of organization performance” with traverse.

The Assignee traverses the requirement for the election of a separate species for claims 39, 41, 42, 43, 44, 45 and 46 by noting that claims 39, 41, 42, 43 and 46 comprise a small Markush group of closely related members while claims 44 and 45 comprise two small Markush groups of closely related members. It is well established that “if the members of the Markush group are

sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they may be directed to independent and distinct inventions. In such a case, the examiner will not ... require provisional election of a single species (see MPEP 803.02).”

The proposed restriction/election requirement for claims 44 and 45 will be traversed a second way by noting that implementing the proposed restriction of these claims would amount to a change in the lexicon of the application. The Assignee notes that it is well established that the inventor or assignee is the lexicographer and/or grammarian for an application (*W.L. Gore and Associates v. Garlock, Inc.* 721 F.2d 1540, 1558, 220 USPQ 303, 316 (Fed Cir. 1983); *Fromson v. Advance Offset Plate, Inc.* 720 F.2d 1565, 219 USPQ 1137, 1140 (Fed Cir. 1983); *Autogiro Co v. U.S.*, 384 F.2d 391, 197, 155 USPQ 697, 702 (Ct. Cl. 1967)). As detailed in one or more cross referenced applications, a matrix of risk is defined by columns and rows where each column represents a segment of value and each row represents type of risk. Along these same lines, a matrix of value is defined by columns and rows where each column represents a segment of value and each row represents an element of value or an external factor that has an impact on one or more segments of value. The restriction of claims 44 and 45 to a single segment of value would replace the matrix defined by the Applicant and Assignee with a column and this column would not provide the detail regarding the source of risk or value claimed in the novel invention described by the instant application. The Assignee objects to this attempt to unilaterally change the lexicon used by the Applicant and Assignee to describe a unique aspect of the claimed invention.

The Assignee notes that the traversal(s) of the election requirement for claims 39, 41, 42, 43, 44, 45 and 46 are intended to show only that the arguments made by the Examiner are contrary to:

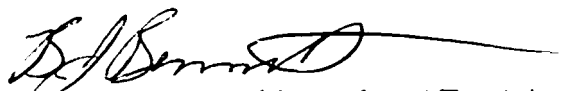
1. the procedures defined by the MPEP, and/or
2. established legal precedent (among other things, the basis for the procedures identified in the MPEP)

The Assignee notes that the Examiner has not cited any case law to support this attempt to restrict the Assignee's well established right to use Markush Groups and/or a lexicon of its own choosing to describe the unique aspects of the claimed invention. It is important to note that the arguments made in this traversal should not be taken as an acknowledgement that the alleged species for any of the claims are independent or that they are not independent. Along these same lines the arguments made in this traversal should not be taken as an acknowledgement that the alleged species for any of the claims are distinct or that they are not distinct.

Conclusion

The claim amendments were primarily made to fix clerical errors that could cause § 112 issues upon detailed review. The Assignee respectfully requests consideration of the present application as amended herewith. The pending claims, without an election of species, are of a form and scope for allowance. Prompt notification thereof is respectfully requested.

Respectfully submitted,



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